HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 1038 of 2005

Appellant		United India Insurance Co. Ltd. Through Branch Manager, In front of Anupama Talkies, Jagdalpur, District- Bastar (C.G.).
	Versus	
Respondents	1.	Sarwan Kumar Dewangan S/o Shri Banshilal Dewangan, R/o village- Nayapara, Asna, District- Jagdalpur (Bastar) (C.G.).
	2.	Kanchan Bai Wd/o Komal Dewangan, aged 40 years, R/o Village- Heerapur, Tahsil – Kondagaon, District- Bastar, Durg (C.G.).

DB: Hon'ble Shri Justice S. R. Nayak, C.J.
& Hon'ble Shri Justice Satish K. Agnihotri, J.

Mr. Sanjay S. Agarwal, Advocate for the appellant.

ORAL ORDER

(2nd December 2005)

The following order of the Court was passed by S. R. Nayak, C.J.

1. In this appeal preferred by the Insurance Company while assailing the correctness of the impugned award, learned counsel for the Insurance Company would contend that notwithstanding the serious technical defects in the vehicle involved in the accident, the driver/deceased was driving the vehicle and that is why he caused the accident and therefore, the dependent of the deceased is not entitled to any compensation. Secondly, it was contended that the M.A.C.T. was not justified in taking the income of the deceased as Rs.1500/- per month. Both the contentions are not acceptable to us.

2. We have perused the original record. It is true that in the written statement filed by the Insurance Company it was stated that there was a defect in the vehicle. The allegation made by the Insurance Company in the written statement is as vague as it could be. It has not pointed any particular defect in the vehicle and therefore, the

allegation made by the Insurance Company cannot be verified at all. Be that as it may, the Insurance Company having taken the plea in the written statement, it has failed utterly to substantiate that claim. In other words, the plea taken in para 1 of the written statement remains as plea only without any proof.

3. By no stretch of imagination we could think that the M.A.C.T. has erred in law in taking income of the deceased as Rs. 1500/- per month, which works out to Rs. 50/- per day.

4. Having regard to the time and place of the accident, it could not be said that the income taken by the M.A.C.T. to determine the loss of dependency is on higher side. If we may say so, it is on lower side. In the result, the appeal is dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Thakur